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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States of America,

Plaintiff,

vs.

Case No. 2:21-cv-00184-JCM-DJA

**United States' *Ex Parte* Sixth Motion to
Extend the Service Deadline**

PCPLV LLC d/b/a Pinnacle Compounding
Pharmacy, Ofir Ventura, Cecelia Ventura,
Brandon Jimenez, Robert Gomez, Gomez &
Associates, Inc., Rock'n Rob Enterprises,
Amir Shalev, D.P.M., AS Enterprises, Inc.,
and Ivan Lee Goldsmith, M.D.,

Defendants.

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, the United States moves the Court for a sixth order extending the United States' deadline to serve the defendants in this matter. To allow for continued settlement discussions, the United States requests an additional 90-day extension of the service deadline in this matter. The Court previously provided an initial 60-day extension of the United States' service deadline and extended the service deadline from May 3, 2021 to July 2, 2021. The Court also granted the United States' second, third, fourth, and fifth requests for additional 90-day extensions of the United States' service deadline to allow ongoing settlement discussions to continue. The United States' current service deadline is June 27, 2022.

1 The Court has broad discretion to provide the brief extension requested, and the
2 United States respectfully requests this Court grant its Sixth Motion to Extend the Service
3 Deadline in this matter.

4 Respectfully submitted this 23rd day of June, 2022.

5 JASON M. FRIERSON
6 United States Attorney

7 /s/ Allison C. Reppond
8 Allison C. Reppond
9 Assistant United States Attorney
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Memorandum of Points and Authorities**I. Introduction**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, the United States moves the Court for an order extending the United States' deadline to serve the defendants in this matter. The United States' service was initially extended by the Court from May 3, 2021 to July 2, 2021 on a showing of good cause. ECF 3, Ex Parte Order Granting United States' Ex Parte Motion to Extend the Service Deadline Under Rule 4(m) of the Federal Rules of Civil Procedure. The Court provided a second extension of the United States' service deadline from July 2, 2021 to September 30, 2021 on a showing of good cause. ECF 5, Ex Parte Order Granting United States' Ex Parte Second Motion to Extend the Service Deadline Under Rule 4(m) of the Federal Rules of Civil Procedure. The Court also provided a third extension of the United States' service deadline, from September 30, 2021 to December 29, 2021 on a showing of good cause. ECF 7, Ex Parte Order Granting United States' Ex Parte Third Motion to Extend the Service Deadline Under Rule 4(m) of the Federal Rules of Civil Procedure. The Court provided a fourth extension, in light of ongoing settlement discussions, and extended the deadline upon a showing of good cause from December 29, 2021 to March 29, 2022. ECF 9, Ex Parte Order Granting United States' Ex Parte Fourth Motion to Extend the Service Deadline Under Rule 4(m) of the Federal Rules of Civil Procedure. The Court provided a fourth extension, in light of ongoing settlement discussions, and extended the deadline upon a showing of good cause from March 29, 2022 to June 27, 2022. ECF 11, Ex Parte Order Granting United States' Ex Parte Fifth Motion to Extend the Service Deadline Under Rule 4(m) of the Federal Rules of Civil Procedure. The United States now requests one additional 90-day extension of the deadline to serve defendants. There is good cause for the requested extension.

Since the Court granted the prior extensions of the service deadline, the United States remained actively engaged in discussions with the defendants to determine if this matter may be resolved without the burden and expense of protracted litigation. As part of these discussions, the United States has performed a detailed evaluation of the claims and

defenses at issue in order to assess appropriate amounts of settlement authority. The United States has also conducted multiple meetings with the defendants, exchanged documents and information, engaged in substantive discussions regarding the claims at issue in this matter and the potential for settlement, and discussed settlement strategy internally based on information exchanged in various meetings and conversations between the parties. The United States anticipates confirming its final settlement strategy and authority within the next one to two weeks and, with that in mind, is in the process of scheduling additional meetings with the parties to further discuss settlement in July or early August. The United States is certain negotiations will continue forward efficiently and effectively in the coming weeks. Settlement negotiations remain ongoing and productive. As noted in the United States' first Motion to Extend the service deadline in this matter, all defendants have notice of the claims at issue and received an informal copy of the Complaint, ECF 1. The parties¹ have stated they do not oppose a sixth extension of the service deadline, as it will further facilitate settlement discussion that will potentially save the parties much time and expense.

Thus, there is good cause to extend the service deadline in this matter for 90 days, from June 27, 2022, to September 26, 2022, to allow settlement discussions to continue without disruption. Further, even if the Court finds good cause for an extension is lacking, the Court should exercise its broad discretion to provide the brief extension requested. The United States respectfully requests this Court grant its Sixth Motion to Extend the Service Deadline in this matter.

II. Statement of Facts and Procedural History

This case arises from an illegal kickback scheme in which a compounding pharmacy (owned and operated by defendant PCPLV LLC d/b/a Pinnacle Compounding Pharmacy and its principals, defendants Ofir Ventura, Cecelia Ventura, and Brandon Jimenez) paid illegal kickbacks to third-party marketers (including defendants Robert Gomez and his

¹ The United States has been unable to engage in any substantive discussions on this issue with defendant Robert Gomez, as Mr. Gomez has made no plans to proceed with counsel. The United States has encouraged Mr. Gomez to seek counsel and has also informally provided Mr. Gomez with a copy of the Complaint.

businesses, Gomez & Associates, Inc., and Rock'n Rob Enterprises) and physicians (including defendants Ivan Lee Goldsmith, M.D., Amir Shalev, D.P.M., and Shalev's business, AS Enterprises, Inc.) in exchange for referral of large volumes of prescriptions to government healthcare beneficiaries for unnecessary and expensive compounded medications. *See generally* ECF 1, United States' Complaint. Two government healthcare programs, TRICARE and CHAMPVA, and their beneficiaries were targets of this scheme. *Id.*

Pinnacle billed TRICARE and CHAMPVA millions of dollars for compounded prescription medications by Pinnacle. ECF 1 at ¶¶ 88–93. TRICARE and CHAMPVA, believing the prescription claims to be legitimate, based in a proper physician-patient relationship, medically necessary for their beneficiaries, and not based in an illegal kickback scheme, paid the claims submitted by Pinnacle. *Id.* The United States filed suit on February 2, 2021 on behalf of TRICARE and CHAMPVA. The United States now seeks recovery of damages incurred through payment of these false and fraudulent claims. *See generally* ECF 1.

Prior to filing suit, the United States contacted counsel for the defendants and informed them while the United States would be filing suit to preserve the United States' claims under the applicable statute of limitations, the United States also invited the defendants to engage in early discussions toward a resolution of this matter. Those discussions have since commenced and have been productive.

To promote continued settlement discussions, the United States filed its first Motion to Extend the service deadline in this matter on April 23, 2021, seeking an extension of the United States' service deadline under Federal Rule of Civil Procedure 4(m). *See generally* ECF 2, United States' Ex Parte Motion to Extend the Service Deadline Under Rule 4(m) of the Federal Rules of Civil Procedure. Under Rule 4(m), the United States' initial deadline to serve the defendants was May 3, 2021. The Court granted a 60-day extension of the service deadline, extending the deadline for service to July 2, 2021. ECF 3. Those settlement discussions remained productive, so the United States sought four additional 90-

1 day extension of the service deadline, which the Court granted. ECF 5, 7, 9, 11. The
 2 United States' current service deadline is June 27, 2022.

3 While the parties remain engaged in discussions focused on a resolution of this
 4 matter, the United States expects those discussions will not conclude before the current
 5 June 27 service deadline. The United States has met with the various defendants,
 6 exchanged documents and information, and discussed settlement via e-mail and phone
 7 conversations. The United States is also actively engaged in internal discussions regarding
 8 final settlement strategy and authority and anticipates settlement discussions will proceed
 9 efficiently and effectively throughout the coming weeks, including through meeting the
 10 United States is coordinating with the various defendants to occur by mid-July or early
 11 August. These discussions continue to present day and continue to be productive. Though
 12 the United States expects all defendants can be served by June 27, the United States asks
 13 for additional time to complete service in order to facilitate continued settlement
 14 discussions with the various defendants.

15 **III. Points and Authorities**

16 **A. Good Cause Exists to Support a 90-Day Extension of the United States' Service Deadline in This Matter.**

17 Generally, a plaintiff must serve defendants with summons within 90 days of the
 18 filing of the Complaint. Fed. R. Civ. P. 4(m). Rule 6(b) of the Federal Rules of Civil
 19 Procedure allows a party to seek an extension of any applicable deadline via motion and
 20 upon a showing of good cause for the extension. Thus, if the plaintiff shows good cause for
 21 an extension of the service deadline, "the court *must* extend the time for service for an
 22 appropriate period." Fed. R. Civ. P. 4(m) (emphasis added). After the plaintiff establishes
 23 good cause, the court has no discretion to deny an extension of the service deadline. *Id.*;
 24 *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007). Plaintiffs in need of an extension of
 25 the service deadline are encouraged to seek relief from the court before the service deadline
 26 has expired where possible. *See* Fed. R. Civ. P. 6(b); *see also Mendez v. Elliot*, 45 F.3d 75, 79
 27 (4th Cir. 1995).
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1 “In the ordinary course, a litigant who seeks an extension of time must show good
2 cause for the desired extension.” *Rivera-Almodovar v. Instituto Socioeconomico Comunitario, ;*
3 *Inc.*, 730 F.3d 23, 27 (1st Cir. 2013). “If good cause is present, the district court must extend
4 time for service and the inquiry is ended.” *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298,
5 1305 (3rd Cir. 1995). The meaning of good cause in this context does not include mistakes
6 of counsel or a desire to amend the complaint in a particular action. *Fimbres v. United States*,
7 833 F.2d 138, 139 (9th Cir. 1987).

8 The analysis of whether good cause supports extension of the service deadline is an
9 equitable one that focuses on the totality of the circumstances. *See Pioneer Inv. Servs. Co. v.*
10 *Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993). A court’s response to requests to
11 extend service “should be consistent with the trend towards flexibility under [Federal] Rule
12 4(m)” *See United States v. 2,164 Watches, More or Less Bearing a Registered Trademark of Guess?,*
13 *Inc.*, 366 F.3d 767, 772 (9th Cir. 2004) . Courts commonly consider three factors in
14 determining whether good cause exists, including (1) the reasonableness of plaintiff’s efforts
15 to serve, (2) prejudice to the defendant by lack of timely service, and (3) whether plaintiff
16 moved for an enlargement of time to serve. *See MCI Telecomm. Corp. v. Teleconcepts, Inc.*, 71
17 F.3d 1086, 1097 (3rd Cir. 1995) (citing *United States v. Nuttall*, 122 F.R.D. 163, 166–67 (D.
18 Del. 1988)). “A plaintiff may also be required to show the following: (a) the party to be
19 served personally received actual notice of the lawsuit; (b) the defendant would suffer no
20 prejudice; and (c) plaintiff would be severely prejudiced if his complaint were dismissed.”
21 *Boudette*, 923 F.2d at 756. Ultimately, “when a plaintiff has offered an explanation for
22 noncompliance with the rule which could support a finding of “good cause,” the absence of
23 prejudice to the defendant is a factor that ought to be considered in assessing whether the
24 explanation offered justifies relief.” *Floyd v. United States*, 900 F.2d 1045, 1049 (7th Cir.
25 1990).

26 The United States seeks a sixth extension of the service deadline for the sake of
27 ongoing discussions focused on resolving this matter, not as a result of any neglect or
28 mistake. The United States has elected not to serve the defendants to date in hopes of

1 resolving most or all of the claims at issue and bringing an early end to this litigation. To
2 that end, the United States has held several meetings with the defendants, exchanged
3 documents and information with them, maintained continuous communication via e-mail
4 and phone with the defendants, and engaged in internal discussions focused on settlement
5 strategy based on information exchanged in various meetings and conversations between
6 the parties. The United States has also conducted a detailed evaluation of the claims and
7 potential at issue to ensure it proceeds forward with an effective and reasonable settlement
8 strategy. These discussions and evaluations are all ongoing, and the United States
9 anticipates settlement discussions will continue efficiently and effectively in the coming
10 weeks once it confirms final settlement strategy and authority. The United States is also in
11 the process of scheduling additional settlement-focused meeting with the defendants to
12 occur by mid-July or early August. Once service has occurred in this matter, a variety of
13 deadlines fall into place, including answer deadlines and various early motion deadlines.
14 This will increase expense to all parties and potentially disrupt early settlement efforts.

15 Further, the defendants have received notice of this lawsuit, were well aware of the
16 nature of the claims prior to filing, and will not be prejudiced by an additional extension of
17 the service deadline. To the contrary, all parties agree they will benefit from an extension of
18 the service deadline to allow for continued early settlement discussions. As there is good
19 cause to extend the service deadline, the Court should grant the United States' Sixth
20 Motion to Extend and provide a brief, 90-day extension of the service deadline in this
21 matter.

22 **B. Even Assuming *Arguendo* the Court Finds a Lack of Good Cause, the**
23 **Court Should Exercise Its Discretion to Provide a Permissive Sixty-Day**
24 **Extension of the United States' Service Deadline.**

25 Even in the event the Court finds a lack of good cause to support a brief extension of
26 the United States' service deadline, the Court still has broad discretion to provide an
27 extension of the service deadline. *See 2,164 Watches*, 366 F.3d at 772 ("We have previously
28 held that district courts have broad discretion under [Federal] Rule 4(m) to extend time for
service even without a showing of good cause."). This principle reflects the idea that

1 “service of process is more flexible than it once was.” *Id.* (internal quotation marks and
2 citation omitted). A court’s response to a plaintiff’s request for additional time to serve the
3 defendants should reflect this flexibility. *See id.* If the plaintiff establishes “exclusable
4 neglect” on the part of the plaintiff, the court should provide a permissive extension of the
5 service deadline. *Hoffman v. Red Wing Brands of Am., Inc.*, No. 3:13–CV–00633–LRH–VPC,
6 2014 WL 4636349, at *4 (D. Nev. Sept. 16, 2014).

7 The court may consider four factors in determining whether a permissive extension
8 of the service deadline is appropriate: “(1) the danger of prejudice to the opposing party; (2)
9 the length of the delay and its potential impact on judicial proceedings; (3) the reason for
10 the delay; and (4) whether the movant acted in good faith.” *Harco Nat’l Ins. Co. v. Ackerman*,
11 No. 2:20-cv-01208-RFB-BNW, 2020 WL 6785934, at *2 (D. Nev. Nov. 17, 2020). In
12 determining whether an extension of the service deadline is appropriate, the district court
13 should particularly consider the prejudice that will result to the parties to the action if an
14 extension is (or is not) provided. *See 2,164 Watches*, 366 F.3d at 772. A lack of prejudice to
15 the defendants may “tip the scale” in favor of an extension of the service deadline. *See MCI*
16 *Telecomm. Corp.*, 71 F.3d at 1097.

17 The defendants will not suffer prejudice by an additional brief extension of the
18 service deadline. Rather, all parties agree they will benefit from the extension, as they can
19 continue efforts for an early resolution of this matter and avoid unnecessary additional
20 expense. The United States, on the other hand, would be prejudiced by a denial of this brief
21 extension, including incurring the expense associated with serving the various defendants
22 and potential disruption of ongoing settlement discussions. Further, a portion of the United
23 States’ claims would be barred if this matter is dismissed, despite the United States’ efforts
24 to resolve the claims at issue without unduly burdening the Court. The United States brings
25 this Sixth Motion to Extend in good faith and for a justifiable reason, as the purpose of this
26 Motion is to promote resolution of this matter without prolonged litigation. Finally, the
27 United States only seeks a 90-day extension of the upcoming service deadline, which will
28 not result in undue delay to the parties or the Court. The United States respectfully asks the

1 Court to grant its Motion to Extend and provide an additional 90-day extension of the
2 service deadline.

3 **IV. Conclusion**

4 Based on the above, this Court should grant the United States' *Ex Parte* Motion to
5 Extend the Service Deadline, provide a 90-day extension of the United States' service
6 deadline, and require service to be completed by Monday, September 26, 2022, and grant
7 any such further relief to which the United States' may be entitled.

8 Respectfully submitted this 23rd day of June, 2022.

9
10 JASON M. FRIERSON
United States Attorney

11
12 /s/ Allison C. Reppond
Allison C. Reppond
13 Assistant United States Attorney
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16 **Certificate of Service**

17 I hereby certify that on June 23, 2022, I electronically filed the foregoing **United**
18 **States' Ex Parte Sixth Motion to Extend the Service Deadline** with the Clerk of the Court
19 for the United States District Court for the District of Nevada using the CM/ECF system

20 Dated this 23rd day of June, 2022.

21 /s/ Allison C. Reppond
Allison C. Reppond
22 Assistant United States Attorney
23 United States Attorney's Office
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States of America,

Plaintiff,

vs.

PCPLV LLC d/b/a Pinnacle Compounding
Pharmacy, Ofir Ventura, Cecelia Ventura,
Brandon Jimenez, Robert Gomez, Gomez &
Associates, Inc., Rock'n Rob Enterprises,
Amir Shalev, D.P.M., AS Enterprises, Inc.,
and Ivan Lee Goldsmith, M.D.,

Defendants.

Case No. 2:21-cv-00184-JCM-DJA

**United States' *Ex Parte* Sixth Motion to
Extend the Service Deadline**

The Court having considered the United States' *Ex Parte* Sixth Motion to Extend the service deadline, and good cause having been shown, it is ORDERED that:

(1) The motion is GRANTED; and

1 (2) The United States has up to and including September 26, 2022, to serve the
2 defendants named in the Original Complaint [ECF 1].
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4 Respectfully submitted this 23rd day of June, 2022
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6 JASON M. FRIERSON
7 United States Attorney

8 /s/ Allison Reppond
9 Allison Reppond
10 Assistant United States Attorney
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13 IT IS SO ORDERED:

14 DATED this 24th day of June 2022.
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17 _____
18 United States District Magistrate Judge
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